

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

3 || United States of America

Plaintiff,

5 -v- Case No. 19-20220

6 Anthony Vespa,

Defendant.

PLEA HEARING

BEFORE THE HONORABLE DAVID M. LAWSON
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
August 6, 2019

13 APPEARANCES:

14 FOR THE PLAINTIFF: KAREN REYNOLDS
15 ADRIANA DYDELL
16 United States Attorney's Office
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Detroit, Michigan 48226

18 FOR THE DEFENDANT: STEVEN FISHMAN
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1 Detroit, Michigan

2 August 6, 2019

3 4:08 p.m.

4 * * *

5 THE CLERK: All rise. The United States District
6 Court for the Eastern District of Michigan is now in session,
7 the Honorable David M. Lawson presiding.

8 THE COURT: You may be seated.

9 THE CLERK: Now calling the case of 19-20220,
10 United States of America versus Anthony Vespa.

11 THE COURT: Good afternoon, Counsel. Would you put
12 your appearances on the record, please?

13 MS. REYNOLDS: Good afternoon, your Honor. Karen
14 Reynolds on behalf of the Government. And Eric Newburg from
15 the FBI is to my left.

16 MS. DYDELL: Good afternoon, your Honor. Adriana
17 Dydell also on behalf of the United States.

18 MR. FISHMAN: Good afternoon, Judge. Steve Fishman
19 on behalf of Mr. Vespa, who is here with me in court and ready
20 to proceed with his plea.

21 THE COURT: All right. Good afternoon, Mr. Vespa.

22 THE DEFENDANT: Good afternoon, sir.

23 THE COURT: Stand when you address the Court.

24 You're charged in a single-count information with
25 wire fraud, and I understand you wish to resolve that case

1 against you by entering a guilty plea under a plea agreement
2 with the Government; is that correct, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. I'm going to ask you some
5 questions. If you do not understand a question, don't try
6 to answer it. Tell me you don't understand and I'll try to
7 clarify it for you. All right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If at any time during the proceedings you
10 wish to consult with Mr. Fishman for any reason just tell me
11 and we'll stop and give you a chance to do that.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Would you state your full name for the
15 record?

16 THE DEFENDANT: Anthony Luciano Vespa.

17 THE COURT: Mr. Vespa, I intend to question you about
18 the facts of the crime alleged by the Government.

19 Do you understand that you have a constitutional
20 right to remain silent and not incriminate yourself?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you wish to waive that right so you
23 can answer my questions today?

24 THE DEFENDANT: Yes.

25 THE COURT: How old are you?

1 THE DEFENDANT: I'm 54. I will be 55 on August 10.

2 THE COURT: And how far did you go in school?

3 THE DEFENDANT: Graduate school. I went through law
4 school.

5 THE COURT: All right. Do you read, write, and
6 understand the English language?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you ever been treated for a mental
9 illness or addiction to narcotic drugs of any kind?

10 THE DEFENDANT: No.

11 THE COURT: Are you presently under the influence of
12 any drug, medication, or alcoholic beverage of any kind?

13 THE DEFENDANT: No.

14 THE COURT: I find that Mr. Vespa is an adult and
15 competent to plead.

16 Do you understand that you have the right to have an
17 attorney represent you during all stages of the proceedings
18 and if you cannot afford a lawyer of your own choice I will
19 appoint one for you?

20 THE DEFENDANT: Yes.

21 THE COURT: Did you and Mr. Fishman receive a copy of
22 the information, which is the document that contains the
23 charge against you?

24 THE DEFENDANT: Yes.

25 THE COURT: Did he explain to you the elements of the

1 crime?

2 THE DEFENDANT: He did.

3 THE COURT: Did he review with you the evidence the
4 Government would be able to produce at trial if you chose to
5 go to trial?

6 THE DEFENDANT: Yes.

7 THE COURT: And did he explain how that evidence
8 would satisfy the elements of the crime?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you considered and consulted with
11 him about your options; that is, the relative advantages of
12 pleading guilty versus going to trial?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you decided it is in your best
15 interest to give up your right to trial and plead guilty
16 instead?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you satisfied with the advice and the
19 services that Mr. Fishman has rendered on your behalf through
20 today?

21 THE DEFENDANT: Absolutely.

22 THE COURT: Now, I have a document here called
23 Rule 11 Plea Agreement, which appears to have been signed by
24 you on page 14 today.

25 Did you, in fact, sign that agreement today?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Did you read it before you
3 signed it?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: I'm going to ask -- I guess Ms. Reynolds;
6 right?

7 MS. REYNOLDS: That's correct, your Honor.

8 THE COURT: I'm going to ask Ms. Reynolds to
9 summarize the terms of the plea agreement on the record out
10 loud. I do that so we can all hear what they are. But then
11 another reason is, when she is finished I'm going to ask if
12 anyone has made any other promises to you and which you're
13 relying on in making your decision to plead guilty, because I
14 want to make sure that any aspect of any representations are
15 contained in the document.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: So if you will listen carefully.

19 Ms. Reynolds, please.

20 MS. REYNOLDS: Thank you.

21 Your Honor, the Defendant is agreeing to plead to the
22 count that's contained in the information that the Court has
23 just referred to.

24 The maximum penalty for this offense is 20 years.

25 The maximum possible fine is \$250,000. That's on the first

1 page of the agreement.

2 He is pleading guilty to Count 1.

3 THE COURT: You know what, there is no summary of the
4 supervised release terms on the front page either, which there
5 usually is. Is it three years?

6 MS. REYNOLDS: Oh, I typically do put that on there.
7 I'm sorry.

8 Yes, it is three years, your Honor.

9 THE COURT: At least one and up to three?

10 MS. REYNOLDS: Yes. That's correct.

11 THE COURT: All right.

12 MS. REYNOLDS: Sorry about that.

13 Your Honor, the elements of the offense are on page 2
14 and they have been reviewed by the Defendant and by his
15 attorney, as has the factual basis for the plea agreement,
16 which the Defendant is prepared to speak to in his allocution.
17 That's on pages 2 and 3.

18 Your Honor, on page 4 there is a discussion of the
19 sentencing guidelines. Mr. Fishman and I have spent -- and
20 Ms. Dydell have spent quite a bit of time going through the
21 calculations for this plea and the Defendant has agreed that
22 the Government's position is that the sentencing guideline
23 range will be within the fraud loss of more than \$3,500,000
24 and less than \$9,500,000, but the Defendant has reserved his
25 right to argue that the fraud loss is less. And I'll discuss

1 that in just a moment as I continue through the Rule 11
2 Agreement.

3 Your Honor, if the Court accepts this Rule 11
4 Agreement the Government's recommendation is that the
5 guideline range be 51 to 63 months and the Defendant has
6 calculated the guidelines at less than that.

7 THE COURT: That's all contingent on the loss amount?

8 MS. REYNOLDS: That's correct. The loss amount.
9 And we are prepared to have what I don't think will be an
10 extensive hearing, but we will brief it in sentencing memos
11 and then be happy to discuss it at sentencing. But the
12 Defendant believes that the fraud loss should be between
13 \$500,000 and \$1.5 million for a sentencing guideline range of
14 33 to 41.

15 The Defendant does understand, pursuant to agreement,
16 though, that it is the top of the Government's guidelines
17 that will cap the sentence if the Court accepts the Rule 11
18 Agreement and the Government's calculations.

19 THE COURT: And is the loss amount the only aspect of
20 the offense level that would be in dispute?

21 MS. REYNOLDS: That's correct, your Honor.

22 THE COURT: Okay.

23 MS. REYNOLDS: Your Honor, so those are the
24 sentencing guidelines. We have attached worksheets to the
25 Rule 11 Agreement that encompass the guidelines the Government

1 believes apply, and with the exception of the fraud loss, I
2 believe the Defendant would agree with those also.

3 There is a special assessment the Defendant must pay
4 at or before the time of sentence of \$100.

5 The maximum possible fine will be no more than
6 \$200,000 if the Court imposes a fine.

7 The Defendant has agreed to restitution in this case,
8 but that would depend on how the Court decides to calculate
9 the fraud loss.

10 Your Honor, with the Court's permission for the next
11 section of the Rule 11 Agreement, I'm going to ask Ms. Dydell
12 to explain to the Court what the forfeiture agreement is.

13 THE COURT: All right. That's fine.

14 Ms. Dydell, please.

15 MS. DYDELL: Thank you, your Honor. As part of the
16 agreement the Defendant has also agreed to the entry of a
17 forfeiture money judgment for -- in an amount to be determined
18 by the Court at sentencing. Again, this will be contingent
19 upon the loss amount that the Court determines at sentencing.
20 But the parties have agreed to enter a general preliminary
21 order of forfeiture for a forfeiture money judgment.

22 THE COURT: General, meaning not --

23 MS. DYDELL: In an amount to be determined --

24 THE COURT: Don't talk over me.

25 MS. DYDELL: I apologize, your Honor.

1 THE COURT: General, meaning that there is no
2 specific amount to be mentioned?

3 MS. DYDELL: Not at this time. At sentencing, we
4 will submit an amended preliminary order of forfeiture to
5 amend the amount of the money judgment.

6 THE COURT: And when do you intend to submit the
7 first one?

8 MS. DYDELL: The first one will be submitted -- I
9 have already circulated it to Mr. Fishman for review and so I
10 intend to submit it to the Court within the next week after
11 the Rule 11 Plea Agreement.

12 THE COURT: All right. Is that it?

13 MS. DYDELL: Yes. That's all, your Honor.

14 THE COURT: Oh, okay. I was thinking you were going
15 to -- this is a pretty extensive provision in the plea
16 agreement. I thought you would summarize it more. But if you
17 think that's adequate, that's fine with me.

18 MS. REYNOLDS: Your Honor, and continuing on to
19 page 10 of the Rule 11 Agreement, paragraph 4 discusses each
20 party's right to withdraw from this agreement. As we have
21 indicated before, the top of the guideline range is calculated
22 by the Government and are summarized in paragraph 2B, which
23 is 63 months. If the Court doesn't go over 63 months, the
24 Defendant has no grounds to withdraw from the agreement.

25 If the -- the Government may elect to withdraw if the

1 Court goes below the bottom of the Government's calculation.

2 THE COURT: Wait a minute. Oh, you mean if I
3 calculate the guidelines differently?

4 MS. REYNOLDS: Yes. Yes.

5 THE COURT: Okay. All right.

6 MS. REYNOLDS: Your Honor, there is a waiver of
7 appeal that is on page 10. And for the record, I took word
8 for word your waiver of appeal and included it in here.

9 THE COURT: You know, I can cover that with the
10 Defendant.

11 MS. REYNOLDS: Yes. And I figured that you would.

12 There is also a section on collateral consequences of
13 the conviction, and they include things like his right to
14 vote, to carry a firearm, serve on a jury, but I am sure the
15 Court will go over all of that. And the Defendant has gone
16 through this with his attorney.

17 So, your Honor, this plea agreement was negotiated
18 robustly by both parties and was timely executed and accepted
19 by both parties.

20 THE COURT: Well, not according to the plea agreement.

21 MS. REYNOLDS: According to the plea agreement.

22 THE COURT: No, I say, it was not -- not according to
23 the plea agreement, was it timely executed. It says the offer
24 was withdrawn at 5:00 on March 25th.

25 MS. REYNOLDS: I know. I saw that. I am sorry.

1 THE COURT: I presume that you're waiving that.

2 MS. REYNOLDS: When I say that -- yes. When I say
3 that, I mean it was timely accepted and executed pursuant to
4 the discussions that we had. And some of those discussions
5 continued until -- well, a couple days ago.

6 But we are satisfied that it was timely accepted,
7 your Honor.

8 THE COURT: All right.

9 MS. REYNOLDS: And I believe those are the most
10 important parts.

11 THE COURT: And that provision in paragraph 11 of
12 the plea agreement, then, I take it, is of no consequence?

13 MS. REYNOLDS: It is of no consequence.

14 THE COURT: Anything else, Ms. Reynolds?

15 MS. REYNOLDS: No, your Honor. Thank you,
16 Mr. Fishman.

17 Do you have anything to add to that?

18 MR. FISHMAN: I don't think so. Other than one thing
19 which we will contain in the preliminary order of forfeiture.
20 We anticipate there will be money that's repaid between now
21 and the sentencing date. And that money, the order might be
22 the same, but the Court will be apprised as to how much money
23 has been paid back.

24 THE COURT: Oh, I see. And whatever the restitution
25 amount ordered, there would be a credit against that; is that

1 what you're anticipating?

2 MR. FISHMAN: Precisely.

3 MS. DYDELL: Credited against both the restitution
4 amount and the amount of the forfeiture money judgment.

5 THE COURT: All right. Thank you.

6 Do you understand all that?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. I would like to emphasize a
9 couple of points. There is a reference in the plea agreement
10 to the sentencing guideline range, and I presume you and
11 Mr. Fishman have gone over it thoroughly and he has explained
12 to you how that's calculated. Is that fair for me to conclude?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. The guideline range serves
15 two purposes in this case. The first purpose is to calculate
16 a top end of the guideline range to basically cap off your
17 sentencing exposure.

18 Do you understand what I mean by that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right. And that is anticipated to be
21 63 months, I believe.

22 MS. REYNOLDS: That's correct, your Honor.

23 THE COURT: Is that what you understand it to be,
24 Mr. Vespa?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: If you take a look at page 5, I think you
2 will find it there.

3 THE DEFENDANT: Yes.

4 THE COURT: All right. And that means that if I
5 believe that I must sentence you for this crime to a prison
6 term longer than 63 months, you would have a right to withdraw
7 your guilty plea and proceed to trial on the information.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. You would not have a right to
11 withdraw your guilty plea for any other reason, though.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: The guideline range serves another
15 purpose, and that is that if I -- I must consider the
16 guideline range together with several other factors in
17 determining what your actual sentence is. Now, the guideline
18 range that I consider is the one that I calculate myself.
19 Many times that calculation will mirror what the lawyers have
20 come up with, but I don't do that until after the Probation
21 Department conducts a presentence investigation and produces
22 a report and then both sides have a chance to challenge the
23 facts in the report, and then I make that determination on
24 the -- at the sentencing hearing as to what the guideline
25 range is. And the one that I calculate is the one that I will

1 consider along with several other factors in determining what
2 the sentence is, even if it's different than the one in the
3 plea agreement.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. There is also some appeal
7 waiver language in the plea agreement. Normally you would
8 have the right to appeal your conviction even though it's
9 entered by a guilty plea. But in this plea agreement you are
10 giving up your right to appeal your conviction, but you are
11 retaining your right to appeal any sentencing issues that you
12 raise on a timely basis.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Now, have you had a chance
16 to discuss this plea agreement with Mr. Fishman to your
17 satisfaction?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you need any additional time to review
20 it with him?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: All right. Has anyone made any other or
23 different promise or assurance to you of any kind in an effort
24 to persuade you to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Has anyone told you that I would sentence
2 you to probation or any specific sentence in exchange for your
3 guilty plea?

4 THE DEFENDANT: No.

5 THE COURT: Have you been told that I would treat you
6 more leniently or give you a shorter sentence if you gave up
7 your right to trial and pleaded guilty instead?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone tried to force you to plead
10 guilty by any threats or duress or any pressure brought to
11 bear against you in any way?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Are you pleading guilty freely and
14 voluntarily because, first, it's your own choice to plead
15 guilty; and secondly, you, in fact, are guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that you have the right
18 to plead not guilty to the charge in the information?

19 THE DEFENDANT: Yes.

20 THE COURT: If you were to plead not guilty you would
21 have the protection of several constitutional rights, and I'll
22 explain those in a moment.

23 Do you understand, though, that by pleading guilty
24 you are waiving those rights?

25 THE DEFENDANT: Yes.

1 THE COURT: I'm going to explain those rights to you
2 that you have and when I'm finished I'm going to ask if it's
3 your desire to waive them.

4 First, you have the right to plead not guilty.

5 Secondly, you have the right to a speedy and a public
6 trial by a jury.

7 You know what a jury is; correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Third, you have the right to be presumed
10 innocent unless and until the Government proves your guilt
11 beyond a reasonable doubt to the satisfaction of all twelve
12 members of the jury.

13 Fourth, you have the right to see and hear all of the
14 witnesses who would be called to testify against you, and you
15 have the right to have your attorney cross examine those
16 witnesses.

17 Fifth, you have the right to have the Court order any
18 witness that you might have for your defense appear at trial
19 at Government expense.

20 Sixth, you have the right to testify at a trial if
21 you want to, but no one can make you testify if you don't
22 want to, because you have the right to remain silent, even
23 throughout the entire trial. And if you choose to remain
24 silent, your silence cannot be used against you in any way.

25 Do you understand all of those rights, Mr. Vespa?

1 THE DEFENDANT: Yes.

2 THE COURT: Is it your desire to waive them?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that if you plead
5 guilty and I accept your plea you will be found guilty without
6 a trial of any kind and you will have given up all the rights
7 I just explained to you?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the offense to
10 which you're pleading guilty is a felony?

11 THE DEFENDANT: Yes.

12 THE COURT: A felony conviction will result or can
13 result in the loss of valuable civil rights, such as the right
14 to vote, the right to serve on a jury, the right to hold
15 public office, and the right to possess a firearm.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: It could also have an impact on your
19 ability to hold professional licenses as well. Have you
20 been -- you are aware of that?

21 THE DEFENDANT: Yes.

22 THE COURT: The maximum penalty for this offense, as
23 the Government suggested, is up to 20 years in prison and a
24 maximum fine of up to \$250,000.

25 You're aware; correct?

1 THE DEFENDANT: Yes.

2 THE COURT: Also, have you discussed what supervised
3 release means? Have you discussed that with Mr. Fishman?

4 THE DEFENDANT: Yes. I think we have talked about
5 that, yes.

6 THE COURT: All right. Supervised release is like a
7 period of parole. You're under the supervision of the Court,
8 and you could be placed on supervised release for up to three
9 years after any custody sentence. And if you violate any of
10 the conditions of supervision I could sentence you to
11 additional time in prison.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: You will have to pay a special assessment
15 at or before the time of sentencing in the amount of \$100.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Also, there is a provision in the plea
19 agreement, but also under law, that I will order you to pay
20 restitution in an amount that I determine after the parties
21 submit the information and I make a decision as to how much is
22 appropriate.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Also, the plea agreement contains a

1 provision regarding forfeiture. There will be a preliminary
2 order of forfeiture, and I believe it addresses forfeiture of
3 assets that exist and also a money judgment that could enter
4 in a specific amount once that is determined, and that could
5 be also part of the sentence.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you on probation or parole in any
9 other court right now?

10 THE DEFENDANT: No.

11 THE COURT: Do you understand that if you were not
12 a citizen of the United States that your conviction resulting
13 from this guilty plea could cause you to be deported, it could
14 affect your ability to return to the country, and it could
15 prevent you from becoming a U.S. citizen?

16 Do you understand all of that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand all of the consequences,
19 then, of your guilty plea?

20 THE DEFENDANT: Yes.

21 THE COURT: I'm going to explain to you the essential
22 elements of the offense; that is, what the Government is
23 required to prove beyond a reasonable doubt at a trial. I do
24 this so that you understand what the Government is required to
25 prove, and when I'm finished with this explanation I'll ask if

1 you believe the Government could prove these things beyond a
2 reasonable doubt if you chose to go to trial.

3 So you're charged with wire fraud. In order to
4 convict you of that offense the Government must prove that
5 you devised and executed a scheme to defraud; that is, to
6 obtain money or property by means of a false or fraudulent
7 representation that was material.

8 Secondly, that the scheme included a material
9 representation or the concealment of a material fact.

10 And third, that you used or caused the use of a wire
11 communication in interstate commerce to further the scheme.

12 Do you understand those elements?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you have any questions about them?

15 THE DEFENDANT: No.

16 THE COURT: Do you believe if you went to trial the
17 Government could prove those elements beyond a reasonable
18 doubt?

19 THE DEFENDANT: Yes.

20 THE COURT: How then are you pleading to the charge
21 of wire fraud?

22 THE DEFENDANT: Guilty.

23 THE COURT: Are you pleading guilty because you
24 believe you are guilty?

25 THE DEFENDANT: Yes.

1 THE COURT: Would you tell me in your own words what
2 you did that makes you believe you're guilty?

3 MR. FISHMAN: Judge, would it be all right if we
4 proceeded by question and answer? It's a little bit
5 complicated.

6 THE COURT: No. Sit down.

7 MR. FISHMAN: Not okay?

8 THE COURT: Not okay.

9 MR. FISHMAN: Okay.

10 THE COURT: I think Mr. Vespa is very capable of
11 explaining to me in his own words what he did.

12 THE DEFENDANT: From July 1st, 2012 through what the
13 Government says is October 30th of 2017 --

14 THE COURT: Is that your estimate as well?

15 THE DEFENDANT: Yes.

16 THE COURT: More or less?

17 THE DEFENDANT: More or less.

18 THE COURT: All right.

19 THE DEFENDANT: I was employed as an independent
20 contractor for Southeast Michigan Accountable Care. It was an
21 accountable care organization that had a contract with the
22 Government whereby it managed Medicare beneficiaries. It
23 worked with independent physicians to deliver higher quality
24 care at a lower cost, and if there were savings earned by the
25 organization the Government would bonus those monies back to

1 the organization to be further distributed to the
2 participating doctors and the shareholders of SEMAC. SEMAC
3 is the acronym for Southeast Michigan Accountable Care.

4 The period in question, in October 13th of 2017 SEMAC
5 received a bonus of approximately \$3.9 million from the
6 Centers for Medicare and Medicaid. That money was received
7 by me in a bank account at PNC Bank in the name of SEMAC,
8 and I proceeded to distribute monies to the participating
9 physicians, vendors of SEMAC, and then I also wire transferred
10 money from the PNC Bank account to a bank account, an
11 investment account in the name of SEMAC at Stefil Nicolaus.
12 At that time I had no board authority or permission to take
13 such action.

14 THE COURT: Now, where was the account that you also
15 transferred the money to?

16 THE DEFENDANT: It was at Bank of America.

17 THE COURT: Yes, but what was the name of the account
18 holder?

19 THE DEFENDANT: The account holder was Stefil
20 Nicolaus, but it was in the name of SEMAC.

21 THE COURT: All right. And Stefil Nicolaus was what?
22 Was that a different organization?

23 THE DEFENDANT: Yeah. That was an investment bank
24 that had an investment account. It's a Wall Street firm
25 similar to a Merrill Lynch or Morgan Stanley.

1 THE COURT: I see. And was that an investment
2 account for the benefit of you?

3 THE DEFENDANT: It was in the name of SEMAC. It was
4 pledged as collateral for a line of credit for a company that
5 I owned and operated, called Gordon Lane Partners, and that
6 was a Michigan limited liability company.

7 THE COURT: All right. And how did you benefit from
8 that money?

9 THE DEFENDANT: I made two investments, one in
10 a residential property in Birmingham, Michigan, that I
11 purchased and then started renovating; and the second was an
12 investment in a company called One Lily Pad. The idea behind
13 the investment, it was a loan that was collateralized and was
14 going to earn 10 percent on the money invested.

15 THE COURT: All right. Is it fair to say, then, that
16 basically you were administering the funds that rightfully
17 belonged to SEMAC being paid by the Government and you were
18 basically skimming those funds for your own benefit and
19 putting it into those -- into that other account?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. And you did not have
22 permission to do that?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: All right. Where were you located when
25 you did this?

1 THE DEFENDANT: My office was originally in Dearborn,
2 Michigan, and then I moved it to Birmingham, Michigan.

3 THE COURT: Did the money transfer go by means of
4 wire transfers?

5 THE DEFENDANT: Yes, it did.

6 THE COURT: All right. And did you make any
7 representations to your -- well, I guess not your employer,
8 but to the -- to your contracting counterpart about the
9 transfers of those funds?

10 THE DEFENDANT: When you say contracting counterpart,
11 your Honor, can you clarify that, please?

12 THE COURT: SEMAC.

13 THE DEFENDANT: SEMAC, I did not.

14 THE COURT: The elements of the crime suggest that
15 you engaged in a scheme to defraud by making material
16 misrepresentations.

17 Did you make a misrepresentation to anyone with
18 respect to your entitlement to the funds?

19 MR. FISHMAN: May we have a second?

20 THE COURT: Of course.

21 (Discussion held off the record at 4:32 p.m.)

22 MS. REYNOLDS: Your Honor, may I place something on
23 the record just briefly?

24 THE COURT: Let's wait until they are done with their
25 conversation.

1 MS. REYNOLDS: Thank you.

2 (Discussion held off the record at 4:32 p.m.)

3 THE COURT: One moment, Mr. Vespa.

4 Ms. Reynolds, did you have something?

5 MS. REYNOLDS: Yes. I just wanted to point out that
6 the second element of the offense was -- included not just the
7 material misrepresentations that would be proactively made,
8 but also the concealment of a material fact, which is what I
9 believe he said that he did.

10 THE COURT: That would be the alternate means.

11 MS. REYNOLDS: Yes. Yes. Among other things, but
12 that is consistent with what he said.

13 MR. FISHMAN: I can say to the Court, that was
14 exactly the conversation we had. I'm pretty familiar with
15 the facts. It was the failure to tell people things, more so
16 than telling them lies.

17 THE COURT: All right. So you were taking the money
18 and weren't telling people that you were taking it; is that
19 correct?

20 THE DEFENDANT: Yes.

21 THE COURT: And if you had told people that you were
22 taking the money, there would be repercussions, would you
23 believe?

24 THE DEFENDANT: Yes.

25 THE COURT: In other words, you would be accused of

1 being a thief; right?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Are you satisfied with the
4 factual basis?

5 MS. REYNOLDS: If I could add two things, your Honor.

6 THE COURT: Yes.

7 MS. REYNOLDS: The Defendant has indicated a date, a
8 range of dates for this activity that included the entire time
9 that he was employed as an independent contractor. I would
10 just like to point out the fact that at least the information
11 itself refers to a different set of dates of January 6, 2015
12 through October 30, 2017, which is the heart of the scheme to
13 defraud.

14 I have no problem with the -- there may have been
15 conduct that happened in the larger time frame that he
16 referenced, but the Government's time frame is a little bit
17 different.

18 THE COURT: Well, you're aware that the time frame he
19 mentioned is the time frame that's reflected in the factual
20 basis of the plea agreement?

21 MS. REYNOLDS: Yes. We changed the factual basis
22 because he wanted to do that, but I wanted the Court to
23 understand the inconsistency between the Rule 11 Agreement and
24 the information.

25 THE COURT: I don't know that there is an

1 inconsistency, in that his recitation was broader than the
2 time frame in the information, so it encompassed it.

3 MS. REYNOLDS: Correct. That's correct. I just
4 wanted to point that out.

5 The other thing is, if we went to trial, your Honor,
6 and I think the Defendant would stipulate to this, we would be
7 referencing a wire communication which was a transfer of funds
8 of \$2 million from PNC Bank in Birmingham, Michigan to the
9 Bank of America in New York, New York that was facilitated by
10 the Defendant.

11 THE COURT: Do you agree?

12 THE DEFENDANT: Yes.

13 THE COURT: All right.

14 MS. REYNOLDS: Thank you, your Honor. Other than
15 that.

16 THE COURT: Do you have -- are you satisfied with the
17 factual basis?

18 MS. REYNOLDS: I am, your Honor. Thank you.

19 THE COURT: Mr. Fishman?

20 MR. FISHMAN: I just wanted to clarify, what the
21 Court said is accurate. The reason that we changed that date,
22 Mr. Vespa and I both thought that the first sentence in the
23 factual basis referred to how long he had that relationship,
24 and the relationship began back in 2012. There wasn't any
25 funny business going on back then. The dates that Mr. Vespa

1 has recited to you are the dates of the criminal activity. We
2 just wanted it to be accurate so the Court would see that's
3 how long he was associated with them. We weren't saying that
4 he was doing anything wrong then.

5 THE COURT: Well, let's make the record clear.

6 MR. FISHMAN: Okay.

7 THE COURT: As I understood, Mr. Vespa said to me
8 that he was involved in the criminal activity from July 1 of
9 2012 to October -- or the Government says October 30, 2017,
10 and he said more or less.

11 That's not what he meant to say?

12 MR. FISHMAN: Right.

13 THE COURT: He meant to say he was employed with
14 that -- he was under contract with that organization?

15 MR. FISHMAN: Precisely.

16 THE COURT: All right. Now, do you agree, Mr. Vespa,
17 that the criminal activity to which you're admitting took
18 place sometime between January of 2015 and the end of October
19 of 2017?

20 THE DEFENDANT: I actually believe that the criminal
21 activity occurred in October -- in the month of October '17.
22 That's when it occurred.

23 THE COURT: Is that when the \$2 million was
24 transferred?

25 THE DEFENDANT: Yes.

1 THE COURT: All right.

2 THE DEFENDANT: That's the period of time.

3 THE COURT: Are you still satisfied with the factual
4 basis?

5 MS. REYNOLDS: I'm satisfied with the factual basis,
6 and I think that the question that you just asked the
7 Defendant will be discussed in both the sentencing memos and
8 the sentencing hearing, as far as how long the criminal
9 activity took place.

10 THE COURT: Oh, I see. All right.

11 Mr. Fishman, once again, are you satisfied with the
12 factual basis?

13 MR. FISHMAN: I'm satisfied.

14 THE COURT: All right. After hearing a recitation of
15 your rights, Mr. Vespa, and being advised about the penalties
16 that can be imposed is it still your intention to plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you still want me to accept your
19 plea?

20 THE DEFENDANT: Yes.

21 THE COURT: Counsel, has the Court complied with all
22 of the applicable provisions of Rule 11 of the Federal Rules
23 of Criminal Procedure?

24 MS. REYNOLDS: You have, your Honor. Thank you.

25 MR. FISHMAN: Yes, sir.

1 THE COURT: Thank you. It is the finding of the
2 Court in the case of the United States of America versus
3 Anthony Vespa -- his middle name is not included on the
4 charging document -- that the Defendant is fully competent and
5 capable of entering an informed plea. The Defendant's plea of
6 guilty is a knowing and voluntary plea. The Defendant's plea
7 is supported by his own statement of facts which contains all
8 of the essential elements of the offense.

9 I'll accept the plea. I adjudge the Defendant guilty
10 of the crime charged in the information. I'll take the Rule
11 Agreement under advisement.

12 Mr. Vespa, I'm referring this case to the Probation
13 Department, as is typical, for a presentence investigation and
14 report. The Probation Department will gather information from
15 a variety of sources to prepare that report and one source
16 will be from you. You will be interviewed by the Probation
17 officer and Mr. Fishman will be present with you at that
18 interview.

19 After the report is prepared Mr. Fishman will have
20 a copy and review it with you. You will have a limited period
21 of time to object to the report if you believe it contains
22 erroneous information or even perhaps if it might omit
23 information you think should be included.

24 The objections many times are resolved with the
25 Probation officer, but if they are not I'll rule on them at

1 the sentence hearing.

2 At the sentence hearing both you and your attorney
3 will have a chance to personally address me in open court
4 before I pronounce your sentence.

5 The sentence in this case will take place on
6 November 6 at 9:00 in the morning.

7 You look surprised, Mr. Fishman. Did you --

8 MR. FISHMAN: Yeah. I thought it was the 20th.

9 THE COURT: My note here says November 6th. Did you
10 talk to Ms. Pinkowski about that?

11 MR. FISHMAN: I defer to the assistant case manager.

12 THE CLERK: They did not confer with Ms. Pinkowski.
13 She is aware that that's a troublesome date with Mr. Fishman
14 and she's going to work it out.

15 THE COURT: I'm going to set it for November 6th at
16 9:00 a.m., understanding that if that's a problem that both of
17 you can contact my case manager and we can make adjustments.

18 Is that acceptable with you, Mr. Fishman?

19 MR. FISHMAN: That's fine.

20 THE COURT: All right.

21 MS. REYNOLDS: Thank you, your Honor.

22 THE COURT: Do you have any questions, Mr. Vespa?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Anything further from the Government
25 today?

1 MS. REYNOLDS: No, your Honor. Thank you.

2 THE COURT: From the Defendant?

3 MR. FISHMAN: Nothing from us.

4 THE COURT: All right. Thank you, Counsel.

5 You may recess court.

6 MR. FISHMAN: Thank you.

7 MS. REYNOLDS: Appreciate it. Thank you.

8 THE CLERK: All rise. Court is now in recess.

9 (Proceedings adjourned at 4:39 p.m.)

10 * * *

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13 CERTIFICATE OF COURT REPORTER

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18

s/ Rene L. Twedt

19

RENE L. TWEDT, CSR-2907, RDR, CRR, CRC
Federal Official Court Reporter

August 28, 2019

Date

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